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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re ) Case No. 09-48595-E-13L  
 ) Docket Control No. PPR-1  
 PHILIP LESLIE FRAZIER and )  
 JENNIFER JO FRAZIER, )  
 )  
 Debtors. )

**MEMORANDUM OPINION AND DECISION****Opposition to Motion to Value and Objection to Plan  
Confirmation by Real Time Resolutions, Inc.**

The court has been presented with two matters relating to the confirmation of the Debtors' proposed Chapter 13 Plan. The first is a Motion to Value the secured claim held by Real Time Resolutions, Inc. ("Real Time"). The second matter is the Real Time Objection to Confirmation of the Debtor's Chapter 13 Plan. Confirmation of the Debtors' proposed Chapter 13 Plan is dependent upon the determination of value of the Real Time secured claim. Bank of America holds a claim in this case secured by the first (senior) deed of trust against property commonly identified as the Illinois Avenue Property secures an obligation owed to Bank of America. The Real Time claim is secured by a second (junior) deed of trust against the Illinois Avenue Property.

Based on the undisputed value advanced by the Debtors, the Real Time secured claim would be valued at \$0.00 pursuant to 11 U.S.C. §506(a). Under the terms of the proposed Plan, the Debtors would pay \$0.00 on this secured claim. Upon the completion of the

1 plan, the Debtors would demand the reconveyance of the deed of  
2 trust securing that claim deed based upon the secured claim of  
3 \$0.00 having been paid in full.

4 In response to the motion to value, Real Time filed an  
5 opposition asserting that bifurcation of its claim into a secured  
6 claim and an unsecured claim pursuant to 11 U.S.C. §506(a) is  
7 meaningless because both the secured and unsecured portions must be  
8 paid in full under any Chapter 13 Plan. Real Time advances the  
9 argument that its claim must be paid in full because the Debtors  
10 obtained a discharge in the Chapter 7 case filed on August 3, 2009,  
11 case number 09-36325, ("Chapter 7 Case"). The Debtors having  
12 obtained a discharge in the 2009 Chapter 7 Case, they are now  
13 barred from obtaining a discharge in any subsequent Chapter 13 case  
14 filed within four years of August 3, 2009. See 11 U.S.C.  
15 §1328(f)(1).

16 Real Time asserts that since the Debtors are barred from  
17 obtaining a discharge, 11 U.S.C. §1325(a)(5)(B) requires the  
18 Chapter 13 Plan must provide that both the secured and unsecured  
19 portions of the Real Time claim be paid in full. Because the  
20 proposed Plan does not provide for paying the secured and unsecured  
21 portions of this claim in full, Real Time objects to confirmation.  
22

23 Real Time also asserts that even if valuation of its secured  
24 claim is proper, the Plan is not proposed in good faith. The  
25 Debtors were previously barred from valuing the Real Time secured  
26 claim and having the lien removed in the Chapter 7 case. The  
27 Debtors having obtained their Chapter 7 discharge just three days  
28 before commencing this Chapter 13 case, the substance of the

Chapter 13 case is merely an improper attempt to obtain the heretofore barred removal of the Real Time lien.

The Debtors reply, asserting that both confirmation of the proposed Plan and a valuation of the Real Time secured claim pursuant to §506(a) are proper because obtaining a Chapter 13 discharge is not required for the claim valuation or payment of the allowed secured claim in this case. 11 U.S.C. §1325 only applies to a creditor's secured claim, which is only that portion of the claim determined secured pursuant to §506(a), which in this case is \$0.00. The proposed Chapter 13 Plan provides for payment of the \$0.00.

The Debtors further assert that the proposed Chapter 13 Plan is necessary and in good faith. Under the proposed Chapter 13 Plan the Debtors are curing an arrearage in excess of \$20,000.00 secured by the first deed of trust to Bank of America, paying the restructured \$4,500.00 claim secured by their vehicle, and paying in full the delinquent \$16,417.00 Internal Revenue Service claim. Absent the Chapter 13 Plan, the Debtors would be unable to cure the arrearage and would lose their home.

In addition to the substantive response, the Debtors contended that Real Time does not have standing to oppose the motion to value or object to confirmation of the Chapter 13 Plan. The lack of standing is asserted based on Real Time not providing any evidence in these proceedings that it has been assigned the Countrywide Credit Line. The court ruled at the time of the hearing that Real Time had provided a minimal showing that it had an interest in the claim at issue to assert an objection to confirmation in this case based on the testimony provided at the hearing.

1 VALUATION OF SECURED CLAIMS AND CONFIRMATION OF CHAPTER 13  
2 PLANS FOLLOWING THE DEBTOR OBTAINING A CHAPTER 7 DISCHARGE

3 The court is presented with several issues in this case. The  
4 cornerstone issue in this case is whether the Debtors can confirm  
5 a plan in this case which does not provide for payment in full Real  
6 Times secured and unsecured claims. If the plan cannot be  
7 confirmed as a matter of law, then there is no reason to rule on  
8 the motion to value, since the reason for making a §506(a) secured  
9 claim determination is for the purpose of treatment under a  
10 confirmed Chapter 13 Plan.

11 **History of Bankruptcy Filings by the Debtors.**

12 On August 3, 2009, Philip Leslie Frazier and Jennifer Jo  
13 Messerall Frazier filed a voluntary Chapter 13 case, no. 09-36325,  
14 which was converted to a Chapter 7 case on August 17, 2009 (the  
15 "Chapter 7 Case"). The scheduled general unsecured claims in that  
16 case exceeded the debt limits imposed by 11 U.S.C. §109(e) and the  
17 Debtors were not eligible to proceed under Chapter 13. Schedule D  
18 filed in the Chapter 7 case lists Bank of America as the creditor  
19 with a secured claim in the amount of \$275,681.00, with a first  
20 deed of trust against the Illinois Avenue Property securing that  
21 claim. Bank of America is also scheduled as having a second  
22 secured claim in the amount of \$47,400.00, with a second deed of  
23 trust against the Illinois Avenue Property securing the second  
24 claim.<sup>1</sup> The Debtors' discharge was entered on December 21, 2009.

25 The Debtors commenced the present Chapter 13 case on  
26 December 30, 2009, case no. 09-48595, (the "Chapter 13 Case") nine

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27  
28 <sup>1</sup> Real Time asserts its claim in this case as the successor  
in interest to the Bank of America claim secured by the second  
deed of trust scheduled by the Debtors in their Chapter 7 case.

1 days after the entry of their discharge in the Chapter 7 Case. The  
2 Debtors admitted that the Chapter 13 case was filed due to a  
3 pending foreclosure sale by Bank of America on the first deed of  
4 trust.

5 **Lien Stripping and Chapter 20 Cases Prior to the BAPCPA.**

6 The filing of a Chapter 7 case to discharge debts and  
7 subsequent filing of a Chapter 13 case and plan providing to modify  
8 a secured claim which rode through the prior Chapter 7 case is  
9 commonly referred to as a "Chapter 20." Prior to the enactment of  
10 The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005  
11 ("BAPCPA"), 119 Stat. 23, a Chapter 20 was a useful tool for a  
12 debtor who exceeded the monetary limits for a Chapter 13 case. See  
13 11 U.S.C. §109(e). By filing the Chapter 7 case to discharge  
14 unsecured indebtedness, debtors could reduce their debts to be  
15 within the monetary limits for the filing a subsequent Chapter 13  
16 case. Then, through the subsequent Chapter 13 plan debtors could  
17 save their residence from foreclosure by curing any arrearage  
18 through the plan or establish a court enforced repayment plan for  
19 nondischargeable debt, such as tax obligations. Additionally,  
20 debtors could seek to have the claim secured by a junior lien  
21 valued pursuant to §506(a) for treatment under the confirmed  
22 Chapter 13 plan. Through such valuation the debtor would disburse  
23 payments for only the actual value in the collateral for the  
24 secured claim. Valuation of the claim and payment of the secured  
25 value resulted in the creditor having to reconvey upon payment of  
26 the amount determined to be the §506(a) secured claim.

27 The secured claim treatment under the Chapter 13 plan to  
28 reconvey a junior lien for a payment equal to the value of the

1 collateral is commonly called a "lien strip." At the completion of  
2 the plan and payment of the secured claim in the amount determined  
3 under §506(a), the debtor demands and obtain a release of the lien  
4 because the secured claim has been paid.

5 The short hand reference to a "lien strip" is not an accurate  
6 statement of the legal effect of the Chapter 13 plan, Bankruptcy  
7 Code, and order of the court. By the §506(a) valuation the court  
8 does not remove or "strip" the lien from the property. Rather,  
9 upon the completion of the Chapter 13 plan and payment of the value  
10 in the collateral securing the claim, there is no obligation  
11 remaining to be secured by the lien. With the obligation  
12 satisfied, the creditor is required under the terms of the note,  
13 deed of trust, and applicable state law to reconvey the deed of  
14 trust.<sup>2</sup> In addition, §506(d) provides that to the extent that a  
15 claim against the debtor is not an "allowed secured claim" and the  
16 lien securing the claim is void.

17 As correctly cited in Real Time's Opposition to Motion and  
18 Objection to Confirmation, most courts addressing this issue to  
19 date have concluded that the debtor must obtain a discharge in the  
20 Chapter 13 case in order to obtain the release of a lien based on  
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22 <sup>2</sup> Upon payment of the secured obligation the lien is  
23 extinguished and the trustor/mortgagor is entitled to a  
24 certificate of discharge, the mortgage cancelled or satisfied as  
25 of record, and the deed of trust reconveyed. 4 WITKIN SUMMARY OF  
26 CALIFORNIA LAW, TENTH EDITION, §117, citing California Civil Code  
27 §2939 et seq.; Rest.3d, Property (Mortgages) §6.4; 4 Powell  
28 §37.33; C.E.B., 2 Mortgage and Deed of Trust Practice 3d, §8.84;  
and 13 Am.Jur. Legal Forms 2d, §179:511. The lien is accessory  
to the debt it secures and does not have any additional,  
independent validity. See WITKIN SUMMARY OF CALIFORNIA LAW, Id.,  
§47, and California Civil Code §2909.

1 a §506(a) secured claim valuation. The discharge in a Chapter 13  
2 case is issued upon completion of the Chapter 13 Plan. The entry  
3 of the discharge signifies that the debtor has successfully  
4 completed the Chapter 13 Plan by paying all creditors the amount  
5 required under this new contract embodied in the Plan. What some  
6 courts concluded to be a "discharge requirement" for a lien strip  
7 was comprehensively discussed by several judges in the combined  
8 cases addressed in the *In re Winitzky*, 2009 Bankr. LEXIS 2430,  
9 decision.

10 The analysis in *Winitzky* cites back to one of the earliest  
11 decisions addressing this question, *In re Akram*, 259 B.R. 371  
12 (Bankr. C.D. Cal. 2001). The *Akram* decision is based upon that  
13 court's reading of the holding by the Ninth Circuit Court of  
14 Appeals in *In re Veteran Street Co.*, 144 F.3d 1288 (9th Cir. 1998),  
15 to be that a §506(a) secured claim determination in that case did  
16 not have "*res judicata* effect" until after a Chapter 11 plan was  
17 confirmed. Because the debtor in a Chapter 11 case commonly  
18 receives a discharge at time of confirmation, the *Akram* court  
19 concluded that obtaining the discharge was a necessary event for  
20 the lien to be released based on a §506(a) valuation of the  
21 creditor's secured claim.

22 This court does not concur with conclusions in prior decisions  
23 that, unless the affected creditor accepts the proposed plan  
24 treatment, the debtor must be able to obtain a discharge in the  
25 Chapter 13 case for there to be a §506(a) valuation and a "lien  
26 strip" through a Chapter 13 Plan. In coming to this conclusion,  
27 this court begins with the holding of the Ninth Circuit Court of  
28 Appeals in *Veteran Street Co.* that a §506(a) valuation is effective

1 and used in the bankruptcy case consistent with the purposes for  
2 which the valuation was made by the court. *In re Veteran Street*  
3 *Co., Id.*, at pg. 1291.

4 In *Veteran Street Co.*, the valuation was made for the purpose  
5 of the Chapter 11 debtor's proposed plan of reorganization. When  
6 confirmation of the debtor's proposed Chapter 11 plan of  
7 reorganization was denied by the court, the debtor in possession  
8 was not allowed to use the valuation for other purposes. The debtor  
9 in *Veteran Street* attempted to use the §506(a) valuation as a basis  
10 for the use of cash collateral to pay the debtor-in-possession's  
11 attorneys' fees. When the debtor-in-possession could not confirm  
12 the Chapter 11 plan, the *Veteran Street* court ruled that the  
13 §506(a) valuation became irrelevant. *Id.*, at pg. 1291-1292. The  
14 ruling was not based on the debtor not obtaining a discharge.<sup>3</sup>

15 Another case cited in *Winitzky* is *In re Jarvis*, 390 B.R. 600  
16 (Bankr. C.D. Ill. 2008). Under the terms of the plan in *Jarvis*,  
17 the debtor proposed to make aggregate payments of \$1,051.08 only  
18 a period of twelve months. The payments were sufficient to make  
19 only the current monthly payments on loans secured by the senior  
20 lien on the debtor's residence and for the debtor's car, neither of  
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22 <sup>3</sup> *In re Veteran Street, Id.*, ,

23 In the present case, the bankruptcy court valued the  
24 Property in light of *Veteran's* proposed plan of  
25 reorganization. Since the bankruptcy court rejected the  
26 plan, the valuation of the Property served no purpose  
27 under the Bankruptcy Code. Therefore, the valuation  
should not affect Gold Coast's rights to postpetition  
rents under section 552.

28 The word "discharge" was not used by the Ninth Circuit in the  
*Veteran Street* decision. The only time it appears is in the text  
of 11 U.S.C. §349 which is cited in footnote 2.



1 which were in default. Under the *Jarvis* Chapter 13 plan, no  
2 payments were made to creditors holding priority or general  
3 unsecured claims, and no arrearage was being cured to prevent a  
4 foreclosure. One of the grounds for denying confirmation in *Jarvis*  
5 was a finding that the plan was not in good faith, but merely  
6 contrived camouflage to make zero payments to the creditor whose  
7 lien was being stripped. *In re Jarvis, Id.*, pg. 606.<sup>4</sup> That plan  
8 not being proposed in good faith, confirmation was denied.

9 Though the *Winitzky* line of cases focus on the discharge as  
10 the requirement for the lien being removed, there is no dispute  
11 that a discharge, in and of itself, does not exonerate the debtor  
12 of the obligation or remove a lien. The discharge imposes a  
13 statutory injunction preventing the creditor from enforcing the  
14 discharged debt against the debtor personally or against specified  
15 assets. *Johnson v. Home State Bank*, 501 U.S. 78 (1991). The  
16 discharge does not release a lien from the Debtor's property, and  
17 the lien may continue to be enforced against the debtor's property  
18 which is subject to that lien.

19 In *Dewsnup v. Timm*, 502 U.S. 410 (1992), the Supreme Court  
20 addressed whether a debtor could obtain from the court a §506(a)  
21 secured claim value determination in a Chapter 7 case and then have  
22 §506(d) work to statutorily avoid the lien for any amounts in  
23 excess of the §506(a) secured claim. The Court in *Dewsnup*  
24 concluded that §506(d) could not be used to avoid a lien in a  
25 Chapter 7 case, notwithstanding a valuation of the secured claim  
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27 <sup>4</sup> The court in *Jarvis* also denied confirmation on the  
28 alternative grounds that the debtor was barred a discharge in the  
Chapter 13 case and the plan did not provide for payment of the  
secured and unsecured portions of the creditor's claim.

1 under §506(a). *Id.* at 417. This decision was not based on the  
2 plain reading of the statute, but the Supreme Court concluding that  
3 there was not a clear Congressional intent to change well-  
4 established law that a bankruptcy discharge does not affect a  
5 creditor's lien.

6 The Supreme Court followed with the decision in *Nobelman v.*  
7 *American Savings Bank*, 508 U.S. 324 (1993), addressing the question  
8 of whether §506(a) could be used to bifurcate a claim into a  
9 secured and unsecured claim for payment through a Chapter 13 plan.  
10 The debtor in *Nobelman* sought to have the claim secured by their  
11 residence reduced to the value of the property, and the balance of  
12 the claim paid as an unsecured claim through the plan. The Supreme  
13 Court concluded that "Section 1322(b)(2), the provision at issue  
14 here, allows modification of the rights of both secured and  
15 unsecured creditors, subject to special protection for creditors  
16 whose claims are secured only by a lien on the debtor's home." *Id.*  
17 at 327.

18 The Supreme Court rejected the proposed valuation,  
19 confirmation, and potential lien reconveyance in *Nobelman* because  
20 of the specific limitation stated in 11 U.S.C. §1322(b)(2) which  
21 prohibits modifying the rights of the creditor holding a claim  
22 secured only by the debtor's residence. Because the plan could not  
23 be confirmed, there was no reason to proceed with a valuation of  
24 that creditor's secured and unsecured claims.

25 The Ninth Circuit Court Appeals subsequently held in *Zimmer v.*  
26 *PSB Lending Corporation (In re Zimmer)*, 313 F.3d 1220 (2002), that  
27 the §1322(b)(2) debtor's primary residence limitation does not  
28 apply when there is no value in the residence to secure the lien at

1 issue.<sup>5</sup> If there is no value for the secured claim as determined  
2 under §506(a), then the creditor's claim is not secured and the  
3 anti-modification provisions do not apply.

4 The modification of the rights of a creditor holding a secured  
5 claim through a §506(a) valuation and Chapter 13 Plan occurs  
6 through a series of events. First, the secured and unsecured  
7 claims are valued under §506(a). Second, the debtor confirms a  
8 Chapter 13 Plan. It is the Chapter 13 Plan, by which the debtor  
9 commits him or herself to a plan, which becomes the new contract  
10 between the debtor and creditors. *In re Than*, 215 B.R. 430 (9th  
11 Cir. B.A.P. 1997). Third, the debtor pays the full amount of the  
12 §506(a) secured claim amount through the Chapter 13 Plan, resulting  
13 in there being no remaining obligation secured by the lien.  
14 Fourth, upon completion of the Chapter 13 Plan (new contract with  
15 the creditors) and payment of the §506(a) claim, the debtor then  
16 demands reconveyance of the deed of trust or release of the lien  
17 pursuant to the terms of the underlying note, deed of trust,  
18 security instrument, applicable law, or 11 U.S.C. §506(d).

19 It is the completion of the plan and performance under the new  
20 contract created under the Bankruptcy Code which result in the  
21 debtors having the right to demand and receive the release of the  
22 lien. The granting or denying of a discharge does not alter or  
23 remove the lien, and is not the basis for the court to denying a  
24 motion to value a creditor's secured claim.

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26 <sup>5</sup> This ruling was consistent with the five other Courts of  
27 Appeals and two Bankruptcy Appellate Panels which had previously  
28 addressed the issue, and represents the majority view that a  
claim for which there is no value in the collateral is a  
completely unsecured claim for valuation and Chapter 13 plan  
purposes.

1           **THE BACPA AMENDMENTS DO NOT REQUIRE THE DEBTORS**  
2           **OBTAIN A DISCHARGE FOR A CHAPTER 20 LIEN STRIP TO BE EFFECTIVE**

3           With the 2005 amendments to the Bankruptcy Code, Congress  
4 altered the landscape for a debtor attempting to utilized Chapter  
5 13 of the Bankruptcy Code. Before a debtor may attempt to enforce  
6 the provisions of the new contract embodied in a Chapter 13 plan,  
7 the debtor must first obtain confirmation of the plan. The BAPCPA  
8 included an amendment to 11 U.S.C. §1325(a)(5) concerning treatment  
9 of secured claims under a Chapter 13 plan. A condition of  
10 confirmation is that for each allowed secured claim provided for by  
11 the plan (1) the holder of such claim accept the Plan or (2) the  
12 holder retains the lien securing such claim until the earlier of  
13 (a) payment of the underlying debt determined under non-bankruptcy  
14 law or (b) a discharge being granted under section 1328, with the  
15 value of payments under the plan to be not less than the allowed  
16 amount of the such claim.<sup>6</sup>

17           To address Real Time's contention that the amendment to 11  
18 U.S.C. §1325(a)(5) mandates payment of both the secured and  
19 unsecured portions of its claim because the Debtors cannot obtain  
20 a discharge, the court must carefully consider the words used by  
21 Congress in crafting 11 U.S.C. §1325(a)(5). See *Nobelman v.*  
22 *American Savings Bank, Id.*, and the Ninth Circuit Court of Appeals  
23 in *Zimmer, Id.*, giving effect to the language chosen by Congress to  
24 interpret the anti-modification provisions of 11 U.S.C.  
25 §1322(b)(2).

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26  
27           <sup>6</sup> Prior to the 2005 amendments, a debtor was only required  
28 to provide in the plan that the creditor retain the lien and the  
payments on the claim to be not less than the allowed amount of  
such claim.

1 A creditor entitled to assert the provisions of 11 U.S.C.  
2 §1325(a)(5) must be the holder of an "allowed secured claim." A  
3 "secured claim" is a term of art under the Bankruptcy Code,  
4 *Nobelman*, at pg. 331,<sup>7</sup> and is the secured claim determined  
5 pursuant to §506(a). As the Ninth Circuit has concluded in *Zimmer*,  
6 for the creditor to have a "secured claim" there must be value for  
7 the creditor's interest in the collateral. If there is no value,  
8 then the creditor has a lien and an unsecured claim. *In re Zimmer*,  
9 *Id.*, at pg. 1225

10 As directed by the Ninth Circuit Court of Appeals in *In re*  
11 *Zimmer*, *Id.*, pg. 1226, if there is no value in the collateral to  
12 secure the claim, then Real Time does not hold a secured claim and  
13 therefore does not have a basis for asserting rights under 11  
14 U.S.C. §1325(a)(5). The court must now make the U.S.C. §506(a)  
15 valuation determination of the Real Time secured and unsecured  
16 claims.

17  
18 **REAL TIME DOES NOT HOLD A SECURED CLAIM AND  
THE OBJECTION TO CONFIRMATION IS OVERRULED**

19 In the present case, the evidence before the court establishes  
20 that the Illinois Ave Property has a value of \$240,000.00 and is  
21 subject to a first deed of trust to secured a \$275,681.00 claim  
22 held by Bank of America. The Bank of America deed of trust is  
23

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24 <sup>7</sup> In *Nobelman*, the Supreme Court found significance in  
25 Congress choosing to use the phrase "claim secured only by a  
26 security interest in real property..." in carving out an  
27 exception to 11 U.S.C. §1322(b)(2), and concluded that such  
28 language referenced rights and interests other than those  
relating to a secured claim. In 11 U.S.C. §1325(a)(5) Congress  
limited that section to each "allowed secured claim." Thus, the  
creditor attempting to assert rights under 11U.S.C. §1325(a)(5)  
must have a secured claim.

1 senior in priority to the deed of trust securing the Real Time  
2 claim. This court finds persuasive the opinions of value stated by  
3 the Debtors as the owners of the property. Further, no opposition  
4 to the value asserted by the Debtors or counter evidence was  
5 introduced by Real Time to support any other value for the Illinois  
6 Avenue Property.

7 The court finds that with the Illinois Avenue Property has a  
8 value of \$240,000.00, the senior lien held by Bank of America  
9 secures an obligation of \$275,681.00, and that the Bank of America  
10 senior lien exhausts all value in that property. There is no value  
11 in the Illinois Avenue Property to secure the Real Time claim.  
12 Pursuant to 11 U.S.C. §506(a) the court determines that the value  
13 of the Real Time secured claim is \$0.00 and the Real Time general  
14 unsecured claim is \$53,591.82.

15 **THE DEBTORS' PLAN IS PROPOSED IN GOOD FAITH**  
16 **AND MAY BE CONFIRMED**

17 Real Time has objected to confirmation on several grounds.  
18 The first objection to confirmation is based on the assertion that  
19 the Debtors are barred from confirming a plan without paying Real  
20 Time's claims (secured and unsecured) in full because of the  
21 discharge they received in the recent Chapter 7 case. As set forth  
22 above, Real Time's objections based on 11 U.S.C. §1325(a)(5) are  
23 overruled because Real Time does not hold a secured claim to raise  
24 such objection in this case.

25 Real Time further objects asserting that the Debtors are not  
26 proceeding in good faith with the proposed Plan because the  
27 Debtors' food budget is \$350, their phone/internet/TV/cell phone  
28 expense is \$370, and the Debtors' business expense attachment

1 includes an additional expense for cell phone. See Debtors'  
2 Schedule J, Exhibit "2" filed by Real Time.

3 Schedule J filed by the Debtors lists \$5,261.19 in total  
4 expenses for a month. Of these, \$2,612.19 are for business  
5 expenses. For the Debtors' family of two persons (Schedule I),  
6 their personal expenses are \$2,649 a month. This does not  
7 including a housing expenses, which is paid through the Plan as a  
8 Class 1 claim.

9 The Business Income and Expense attachment to Schedule J lists  
10 the following business expenses:

|    |                         |            |
|----|-------------------------|------------|
| 11 | Fuel                    | \$ 600.00  |
|    | Liability Insurance     | \$ 100.00  |
| 12 | Workers' Comp Insurance | \$ 100.00  |
|    | Cell Phone              | \$ 250.00  |
| 13 | Labor Ready             | \$1,000.00 |
| 14 | Supplies                | \$ 550.00  |

15 In response to this objection, the Testimony of Jennifer  
16 Frazier has been provided. She states, under penalty of perjury,

17 i. The Phone/Internet/TV service are bundled services  
18 for which the total charges are \$140 a month.

19 ii. The \$600.00 a month in fuel expenses are necessary  
20 for Mr. Frazier's work as a self employed cabinet  
21 installer. His current job is working at Fairchild  
22 Air Force Base in Washington State and is  
23 anticipated to continue for at least the next four  
24 and one-half (4½) years.

25 The court finds the testimony of the Debtor persuasive and  
26 sufficient to explain the reasonable and necessary expenses for the  
27 Debtors. The objection of Real Time based on the Debtors' expenses  
28 is overruled.

1 Real Time has articulated a further objection to confirmation,  
2 asserting that commencing the Chapter 13 case on the heels of the  
3 Chapter 7 discharge is *per se* not in good faith. Good faith,  
4 under 11 U.S.C. §1325(a)(3), is determined based on an examination  
5 of the totality of the circumstances. *Fidelity & Casualty Co. of*  
6 *New York v. Warren (In re Warren)*, 89 B.R. 87, 92 (9th Cir. B.A.P.  
7 1988) (citing *Goeb v. Heid (In re Goeb)*, 675 F.2d 1386, 1389-1390  
8 (9th Cir. 1982)). Factors to consider include:

- 9 1) The amount of the proposed payments and the amounts of the  
10 debtor's surplus;
- 11 2) The debtor's employment history, ability to earn, and  
12 likelihood of future increases in income;
- 13 3) The probable or expected duration of the plan;
- 14 4) The accuracy of the plan's statements of the debts,  
15 expenses and percentage of repayment of unsecured debt, and  
16 whether any inaccuracies are an attempt to mislead the  
17 court;
- 18 5) The extent of preferential treatment between classes of  
19 creditors;
- 20 6) The extent to which secured claims are modified;
- 21 7) The type of debt sought to be discharged, and whether any  
22 such debt is nondischargeable in Chapter 7;
- 23 8) The existence of special circumstances such as inordinate  
24 medical expenses;
- 25 9) The frequency with which the debtor has sought relief under  
26 the Bankruptcy Reform Act;
- 27 10) The motivation and sincerity of the debtor in seeking  
28 Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon  
the trustee.

26 *In re Warren*, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169  
27 (Bankr. S.D. Cal. 1985) (quoting *U.S. v. Estus (In re Estus)*, 695  
28 F.2d 311, 317 (8th Cir. 1982))).



1       The Real Time objection implicates the ninth, and tenth non-  
2 exclusive factors. In substance, Real Time asserts that the  
3 Debtors are merely attempting to do indirectly through a Chapter 20  
4 which the Supreme Court has barred in a Chapter 7 case - using 11  
5 U.S.C. §506(a) to "strip a lien" through a confirmed plan. Real  
6 Time's arguments are unpersuasive and not supported by the evidence  
7 in this case.

8       The Debtors in this case are not merely filing a perfunctory  
9 Chapter 13 Plan where no creditors are paid or arrearage cured.  
10 This is not a situation as in *In re Jarvis*, and *In re Tran* and *In*  
11 *re Bennett* with nominal payments and no substantive reorganization  
12 by the consumer debtor. In those cases the courts concluded that  
13 the Chapter 13 case was filed solely for the purpose of obtaining  
14 a lien strip, with the incidental effect of paying nominal  
15 attorneys' fees for filing the Chapter 13 case.

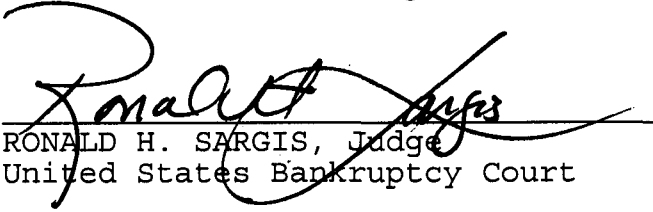
16       The present case provides an entirely different situation.  
17 The Debtors have committed to a 60-month plan and payments of  
18 \$2,743.00 a month, with plan payments totaling \$164,580.00.  
19 Through the plan the debtors will cure a \$20,000.00 arrearage on  
20 the Bank of America secured claim and save their residence from  
21 foreclosure. The Debtors will also pay the prepetition claim of  
22 \$4,500.00 secured by the Debtors' car and an Internal Revenue  
23 Service prepetition nondischargeable claim of \$16,417.00. The  
24 estimated Debtors' attorneys fees are only \$2,000 to be paid  
25 through the plan and the Chapter 13 trustee fees are projected to  
26 be \$13,166.40. An additional \$104,280.00 will be paid through the  
27 plan for post-petition installments on the Bank of America secured  
28 claim.

1 The curing of the arrearage and saving their family residence,  
2 and payment of several pre-petition claims represent a real,  
3 substantial plan and financial reorganization for these Debtors.  
4 The court finds that the plan has been proposed in good faith, and  
5 not by any means forbidden by law. Further, that the plan complies  
6 with the provisions of 11 U.S.C. §1322 for the contents of a plan  
7 and 11 U.S.C. §1325(a) and (b) for confirmation of the plan  
8 proposed in this case.

9 The Real Time objections to confirmation are overruled, and  
10 the plan is confirmed by the court.

11 This Memorandum Opinion and Decision constitutes the Findings  
12 of Fact and Conclusions of law in support of the order determining  
13 the value of the Real time secured claim to be \$0.00, and the order  
14 overruling the objection to confirmation of the Chapter 13 Plan.

15 Dated: January 10, 2011

16   
17 RONALD H. SARGIS, Judge  
18 United States Bankruptcy Court  
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This document does not constitute a certificate of service. The parties listed below will be served a separate copy of the attached document(s).

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